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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,582	03/09/2004	Jefferson G. Shingleton	PWRL 1029-4	1118
22470 7590 01/24/2008 HAYNES BEFFEL & WOLFELD LLP P O BOX 366 HALF MOON BAY, CA 94019			EXAMINER HALL, ASHA J	
			ART UNIT 1795	PAPER NUMBER
			MAIL DATE 01/24/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/796,582	Applicant(s) SHINGLETON ET AL.	
	Examiner Asha Hall	Art Unit 1795	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☒ The period for reply expire 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) ~~as set forth~~ (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see continuation sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL -324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.


 ALEXA D. NECKEL
 SUPERVISORY PATENT EXAMINER

Asha Hall
 Art Unit 1795

The proposed amendments to the claims add limitations which would require further search and consideration. For example in claims 12 and 13, the Applicant has amended the claims to include modules and positioned them spaced apart from the lower surfaces of the modules.

In response to the applicant's arguments:

In regard to claims 1 and 33, the Applicant argues that there is nothing in the rejection stating that the Shingleton patent discloses or suggest the use of a stationary shade structure positioned to a fixed location.

The Examiner respectfully disagrees. Shingleton (US 6,058,930) discloses that the solar panels/structure can be installed upon rooftops/fixed location (col. 8; lines: 40-45) and further depicts in Figures 7 and 8 wherein the structure would provide shading below in the event solar radiation impinges on the structure. It is inherent that rooftops provide shading, hence solar panels provided onto of rooftop will also provide shading.

With respect to claim 13, the Applicant argues that the rib stiffeners 36 and rectangular structure 37 of Catella do not constitute a protective panel. The Examiner respectfully disagrees. Catella et al. discloses an assembly (semi-rigid support member, 10) for a structural support for a photovoltaic (PV) module in Figure 1. The construction of the assembly contains a protective panel mounted to the photovoltaic module subassembly in the form of rib stiffeners (20) and a rectangular structure (23) opposite the lower surfaces to the PV modules (as shown with a mounted photovoltaic module, 22, in Figure 4) and the PV modules are encased in a rigid metal framework such as a metal casing and a rigid transparent cover material/a sheet of material is the rigid transparent cover (col. 1; lines: 31-24). Catella et al. explains that the purpose of the protective panel is both to support the photovoltaic module (column 6, lines 65-8) and to "secure electrical wiring connections between the photovoltaic module and adjacent photovoltaic modules or a current collecting means" (column 7, lines 30-34).

As to claim 36, In response to applicant's argument that even if one were to assume for the sake of discussion, that it would have been obvious to combine the teachings of Shingleton and Morton, the resulting structure would not bear much resemblance to the invention of claim 36. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). For example, Morton teaches a portable garage apparatus (title) that has a roof (top wall structure, 12) that supports solar cells (see Figure 1 and solar energy panels 21,22). As Morton explains in the abstract, this structure is deal for "providing shelter to a vehicle" when the owner of said vehicle does not have a garage. As can be seen in Figure 1, this portable garage has a parking stall (portion of the floor, 13, enclosed by the walls of the structure). Further, Morton discloses the use of a ramp (26) leading to the opening of the garage "being adapted to allow a vehicle to enter the building structure" (column 3, lines 64-66). This implies that the region adjacent to the ramp (26) is a traffic region which is also adjacent to the parking stall region defined above. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the portable garage apparatus of Morton in conjunction with the roof-mounted modular shade system of Shingleton in order to provide shelter to a vehicle when the owner of said vehicle does not have a garage.

As to claim 38, in response to applicant's argument that Klintworth is not analogous art and it is not in the filed of the applicant's endeavor nor is it reasonably related to the particular problem with which applicant was involved is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Shingleton discloses rows of panels that have row lengths and said stationary shade structures have structure lengths (Figure 9A-C), but fails to disclose the row lengths being about equal to the structure lengths, said row lengths and structural lengths extending parallel to one another and parallel to the support surface. In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device (see MPEP 2144.04).

All arguments pertain to the amended claims 12, 13, 18 and 37 which will not be entered into record, because they change the scope of the claims. The proposed amendments to the claims add limitations which would require further search and consideration. For example in claim 1, the claim has been amended to include: wherein the metal oxide comprises a metal having an open structure and wherein the metal oxide is selected from oxides of tantalum and silicon.

Continuation of 11. does NOT place the application in condition for allowance because: some of the arguments are directed to claims as amended and not entered. The arguments directed to the previously presented claims have been addressed below.